IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1307/2001

Reserved on.27.4.2007

Decided on-1.6.2007

Rajesh Kumar **…Petitioner.**

Versus

Municipal Council, Dalhousie **…Respondent**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No*

For the petitioner : **Mr. Neeraj Gupta, Advocate**

For the respondent **Mr. Neeraj Kumar Sharma, Advocate.**

Rajiv Sharma, J.

This petition is directed against the judgment of the learned District Judge, Chamba, District Chamba, H.P. dated 20.10.2001.

The brief facts necessary for the adjudication of this petition are that the respondent-Council had received complaints from its Engineering and Sanitation sections on 22.1.2001 to the effect that the petitioner was raising unauthorized construction by RCC columns with brick masonry measuring 20'x15' in Hurst Lodge Annexe situated at Bakrota, Dalhousie without prior permission from the Municipal Council. Consequently a notice under section 211 (1) (a) of the Municipal Act, 1994 was delivered to the petitioner to stop the construction forthwith. The matter was thereafter placed before the House of the Municipal Council on 8.3.2001 and it was decided to take up the matter by the newly constituted Council. The matter was finally placed before the House of Municipal Council on

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

27.6.2001 whereby it was unanimously resolved to demolish the unauthorized construction of RCC column with brick masonry raised by the petitioner. Ultimately the order dated 5.7.2001 was passed by the Executive Officer, Municipal Council, Dalhousie to demolish the unauthorized construction within 7 days from the date of receipt of the order. Feeling aggrieved by the order dated 5.7.2001, petitioner filed appeal under section 212 (1) of the Municipal Act, 1994 before the learned District Judge, Chamba on 11.7.2001. The learned District Judge has dismissed the appeal on 20.10.2001.

Mr. Neeraj Gupta, Advocate appearing on behalf of the petitioner has argued strenuously that before the issuance of order dated 5.11.2001, the principles of natural justice have not been followed. He has also argued that the judgment dated 20.10.2001 is not sustainable in the eyes of law.

Mr. Neeraj Kumar Sharma, Advocate appearing on behalf of respondent-Council has supported the orders passed by the competent authorities.

I have heard the parties and perused the record.

The respondent-Council after the receipt of complaint dated 22.1.2001 had issued notice to the petitioner on 24.1.2001 to stop the unauthorized construction raised by him. The petitioner despite the receipt of notice dated 24.1.2001 had been raising the unauthorized construction which led to the passing of resolution dated 27.6.2001. Mr. Neeraj Kumar Sharma, advocate on the basis of the reply filed has contended that the petitioner was served with a notice dated 24.1.2001 as well as with the order dated 5th July, 2001. Mr. Sharma has also submitted that no building plan was approved as mentioned by the petitioner and has further submitted that the building plan for addition and

alteration was sanctioned for Hurst Lodge Annexe by the previous owner but not particularly for the disputed portion of the property and plan No. 29 was sanctioned for a separate building.

The order dated 5th July, 2001 is a speaking order and the learned District Judge has also noted all the contentions raised by the petitioner while dismissing the appeal on 20.10.2001. The learned District Judge has extensively gone through the various provisions of the H.P. Municipal Act, 1994 as well as by the bye-laws and Rules framed thereunder.

The second contention raised by the petitioner towards the end of the submissions was that the persons mentioned in para 14 of the petition have not been dealt with in accordance with law. Mr. Neeraj Kumar Sharma has refuted the submission made by the counsel for the petitioner and has submitted that the matters of those persons have been compounded strictly in accordance with law and in majority of the cases, the deviation was within the permissible limits.

The learned District Judge has examined the record and the findings recorded by him will not be interfered with by this Court while exercising the jurisdiction under Article 226/227 of the Constitution of India.

The Hon'ble Supreme Court in ***M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu*** (1999*) 6* SCC 464 has held that the Court should order demolition of such construction even though builder has invested considerable amount. Their Lordships of the Hon'ble Supreme Court have opined as under:

> **"No consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or**

perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

The upshot of the above discussion is that the petitioner had raised unauthorized construction without seeking prior permission of the Municipal Council as per the provisions of the H.P. Municipal Act, 1994 and the Building Bye-Laws framed thereunder.

Accordingly the writ petition is dismissed with no order as to costs and the interim order dated 18.12.2001 is vacated

(Rajiv Sharma), Judge

June 1, 2007
Awasthi